



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,918	07/10/2003	Jessica B. Cohen		4229

7590 01/26/2006
JESSICA COHEN
270 REDWOOD SHORES PKWY
P.O. BOX 176
REDWOOD CITY, CA 94065

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/617,918	Applicant(s) COHEN, JESSICA B.	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1761

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ader (378,752).

In regard to claim 1, Ader discloses a packaging container comprising a container made of a substantially translucent material (e.g. glass which allows light to pass through-which is the definition of translucent), a wall dividing the container into a first and second chamber, the first chamber (C) having a size capable of accommodating an unprepared product, and an opening that would be capable of accessing the unprepared product, the second chamber (B) capable of containing a prepared product and being sealed except for a hole; and a cap (E) for sealing the first chamber and a plug for sealing the hole. This is all claim 1 positively recites. The products are not positively recited in the chambers. The chambers are only recited as capable of containing the products. The container of Ader would have this same capability, as would any compartmented container. This same analysis as to what is positively recited also applies to claims 2-4. As with claim 1, none of these claims positively recite that the product is contained within the container. These claims merely further limit claim 1 in reciting what type of products are capable of being contained within the chambers. For example, claim 2 further limits claim 1 by reciting that the first

Art Unit: 1761

chamber is of sufficient to accommodate tea leaves. The chambers of Ader would be sufficient to/capable of accommodate/accommodating tea leaves. Similarly for tea brewed from tea leaves and a liquid resembling a tea brewed from tea leaves. It is noted that the word "resembling" is somewhat unclear. In what way does the liquid resemble a tea brewed from the tea leaves? In regard to claim 7, Ader discloses the container having a threaded lip. In regard to claim 8, the threaded cap of Ader would form an airtight seal with the first chamber.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5+
Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ader in view of Prepared Foods (1999, 168,(11) 75-76), Lebensmittel-Wissenschaft und Technologie (1996, 29 (3) 267-271), and Good Packaging (1969, 30 (5) 8-9).

5+
Claims 6 and 7 differ from Ader in the recitation that the container is resistant to U.V. light and, specifically, wherein the container has a U.V. resistant coating. As evidenced by Prepared Foods, Lebensmittel-Wissenschaft and Good Packaging, it was well established in the art to provide a container with a U.V. light resistant coating if the product to be packaged is sensitive to U.V. light. To modify Ader and provide a U.V. resistant coating for its art recognized and applicant's intended function would have been an obvious function of the product to be packaged.

Art Unit: 1761

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baurmeister (1,337,034), in view of Bruns (2,684,167), Karesh (4,078,686), Tupper (2,766,796), and Kondo (US2002/0197362).

It is noted that for purposes of this rejection, the container of Bauermeister is construed to be the entire structure of figure 1 (i.e., what Bauermeister calls the jar). Thus, in regard to claim 9, Bauermeister discloses a method of packaging a food product in a substantially translucent container (e.g. glass) having a first chamber adjacent a second chamber, wherein a product is placed in the first chamber, the first chamber is sealed with a removable cap, a second product is placed in the second chamber, and the second chamber is sealed with a "substantially" permanent seal. It is noted that it is not clear what "substantially" permanent seal means. It would seem that either the seal is permanent or it is not permanent. Note, too, that the claim does not restrict the sequence of the steps of the method nor does it limit the claim to not having the second chamber in the removable cap. Therefore, claim 9 only differs from Bauermeister in the particular type of product recited. Claim 9 recites an unprepared product and a prepared product "corresponding" to the unprepared product. How they "correspond" is not recited. In any case, once it is known to package products in compartmented packaging, the particular conventional products one chooses to package is seen to have been an obvious matter of choice. For example Bruns can be relied on to teach that any "related" components or ingredients can be packaged together in compartmented packages and Karesh discloses various products, edible or inedible, that are compatible can be packaged together in compartmented packages.

Art Unit: 1761

Tupper can be relied on as further evidence of compartmented packaging for foods (e.g. coffee and sugar). Whether the conventional products are prepared or unprepared are also seen to have been an obvious matter of choice. Kondo can be relied on to show packaging an unprepared product (e.g., an ear of rice) and a prepared product (e.g., sake, made from the ear of rice); albeit, not in a compartmented container. Note, however, that Kondo includes the rice as part of a marketing scheme to inform the consumer about the product, which is applicant's intent as well.

The remainder of the references, cited on the PTO892 form, are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Application/Control Number: 10/617,918

Page 6

Art Unit: 1761

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/23/06